

*Chesapeake Bay Preservation Act Amendments - Stakeholder Meeting Process*

**Summary Notes from Second Stakeholders Meeting 11-16-10**

Tuesday, November 16, 2010, 6:30 p.m. – 9:30 p.m. at Board of Supervisors Meeting Room, Leesburg

- 1. Welcome/Introduction of Participants & County Officials** - Dan Schardein opened the meeting precisely at 6:30 p.m.
- 2. Agenda Overview** – Facilitator reviewed the agenda, the basic process requirements set by the Board of Supervisors, and the upcoming schedule of meetings. One representative objected to the compressed meeting schedule and asked the group to revisit the notion of asking the BOS for an extended time period. This idea was discussed but did not receive enough support from representatives to pursue it.
- 3. Review Results of First Meeting** – Facilitator reviewed the highlights of first meeting. No changes or clarifications were needed.
- 4 & 5. Review Issues Matrix** – Representatives began reviewing the Issues Matrix prepared by staff based on input to date, including new issues added by the representatives at the first meeting. Objectives of this initial review were to:
  - Identify any additional options for each issue
  - Identify which, if any, options might be generally acceptable, right off the mark.
  - Identify which issues are primary or fundamental, and which are secondary or dependent on the resolution of the primary issues.
  - Identify which issues are beyond the scope of our work in this process.

Specific results of Issues Review are shown on the following pages.

**6. Review Results of Meeting and Schedule of Future Meetings -**

Stakeholders discussed a change in meeting dates in order to be able to use the Board of Supervisors meeting room. However, the consensus was to keep the dates as now scheduled, and look for a suitable room for the December meetings. Thus, schedule of meetings was re-affirmed:

Tuesday, November 30 - 6:30 p.m. to 9:30 p.m. - Location - BOS meeting room

Thursday, December 2 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 7 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Thursday, December 9 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Tuesday, December 14 - 6:30 p.m. to 9:30 p.m. - Location TBD.

Representatives also discussed alternative meeting formats – plenary discussions vs. breakout groups, and decided for the time being to keep working as a plenary group, but keep the option of breakout groups available if needed.

**7. Adjourn** – Facilitator adjourned the meeting precisely at 9:30 pm.

## **Summary of Review of Issues Matrix**

(Note: Issues deemed to be “major issues” are shown in **bold font**; *Resolved Issues in Italics*.)

### **Issue #1 – RPA Mapping**

There was broad support for Options 5 and/or 6. Affirmed as a major issue.

### **Issue #2 – Remove RPA Adjacent to Wet Ponds**

There was some support for Option 3 with modifications, and for Option 2. Concern was cited regarding conflicts with approved proffers requiring buffers in some communities. Affirmed as a major issue due to the fact that most of the RPA lies adjacent to ponds in many communities.

### **Issue #3 – Eliminate RMA**

There was some support for Option 3 and for Option 1. Likely a major issue.

### **Issue #4 – Eliminate RPA Screening Tool**

*There was broad support for Option 2. This issue is resolved.*

### **Issue #5 – Accessory Residential Structures Exempt from CBPO**

This is a major issue in that *its resolution is tied to other issues*. [Thus, it’s actually a dependent issue]. Suggestion to use Fairfax County’s language to address this. Similar to issue #2. Fairfax County’s policy is to only exempt sheds less than 150 sf over areas of existing lawn in the RPA. Options #2 & #3 allow sheds to be constructed anywhere in the RPA. Option #3 allows a cumulative total of 150 sf of disturbance anywhere in the RPA to accommodate multiple structures (e.g., a shed and a playset).

### **Issue #6 – Accessory Structures and Uses Approved by Admin Waiver**

Affirmed as a major issue. What is the process? Needs work on the administrative waiver process to clarify.

### **Issue #7 – Multiple Accessory Structures up to 2,500 s.f. approved by Admin Waiver**

What is the connection to the RPA on the parcel?

New option suggested: Use the *percentage* of impervious area on site in RPA.

RPA percentages for 8,515 parcels containing RPA are as follows:

<25% RPA – 5,271 (62%)

25-50% RPA – 2,074 (24%)

50-75% RPA – 809 (10%)

>75% RPA – 361 (4%)

### **Issue #8 – Increase Land Disturbance Threshold above 2,500 s.f.**

Some support for Option 2, and for Option 3. Suggestion to use 10,000 sf for everything.

Suggestion to use 10,000 sf for Ag, and 5,000 sf for commercial as currently defined.

Affirmed as a major issue.

### **Issue #9 – Previously Approved Projects to meet CBA standards**

What is the difference between “practical” and “possible”? While “possible” includes a discussion related to costs/viability of various options. Compliance with “practical” is based principally upon cost considerations. State Code Section 15.2-2261 refers to “greatest extent

possible” and does not include the term “practicable.” Potential conflict with approved proffers. Proffer would be a de facto “grandfather”. Would be judged by conformance with the approved concept plan. New Option: “Grandfather all previously approved projects” is already included as Item #36. (would need to define this phrase). Affirmed as a major issue.

#### **Issue #10 – Exemptions to Grandfathering Policy**

Similar to Issue #9. Affirmed as a major issue. Also need to address pending plans that are in the review process. Pending plans include plans submitted pursuant to previously approved plans (e.g., construction plans submitted pursuant to an approved preliminary plat).

#### **Issue #11 – Definition of Best Management Practices**

Some representatives indicated that Option 2 is okay. Need better definition of the term “most.” What are the water quality goals? (They are cited in the State regulations.) The water quality goal is to reduce nonpoint source pollution (e.g., sediment and nutrients). The Chesapeake Bay Preservation Area Designation and Management Regulations state: “The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.” How is the effect quantified? (SWCD will make the call). This was flagged as “We hope this is not a major issue.”

#### **Issue #12 – Definition of “Plan of Development”**

Option 1 had some support; representatives acknowledged that this issue is contingent upon Issue #1. Need more definitive delineation up front.

#### **Issue #13 - Definition of “Redevelopment”**

“IDA” (Intensely Developed Area) is a new term. New definition of “redevelopment” affects the whole zoning ordinance. (Staff noted that certain definitions are limited to the Chesapeake Bay provisions and would not conflict with other parts of the ordinance). May not be an issue if other permissible encroachments are permitted within the RPA.

#### **Issue #14 – Private Roads and Driveways**

There was some support for Option 1. This is a potential major issue. “Public vs. private” is an ownership issue, not a functional issue. There are different design specifications for Public vs. Private roads in the Facilities Standards Manual. Would this apply to existing roads? (Applies only to new construction, not maintenance).

#### **Issue #15 – Wetland Restoration**

Is there a potential conflict with federal law? (In 84 jurisdictions that use similar provisions, no such conflict has been identified). Need to make this ordinance simpler. Substantial support for Option 2. Some support for Option 1.

#### **Issue #16 –Septic fields/connections and storm drains in RPA**

Storm sewers *have* to be in RPA. Some support for Option 2. This was affirmed as an issue of clarification.

### **Issue #17 – Planting of Buffer Area**

Affirmed as a major issue due to cost considerations. Some support for Option 2. Cost is a concern, as is “change in use.” There may be other options as well.

### **Issue #18 – Minimum Distance between RPA and Principal Structure**

Some support for Option 2. New Option 3: Specify percentage of yard required to be located outside the RPA (lower percentage on larger lots). There was strong sentiment for using a definitive number for setbacks – the issue is thus: what is the most appropriate number?

### **Issue #19 – Optional Provision for Plastic Filters**

*Broad support for Option 1 - This issue is resolved.*

### **Issue #20 – Mandatory Septic Pump-Out**

New Option: Tie pump out timing to the # of occupants vs. size of the house, etc.

New Option: Eliminate such requirement.

New Option: Notify people when they need to pump.

Discussion points: What is the cost of the pump out? How to stop leaching from septic tanks? How many failures are there now? Leaching can occur before failure, so failure isn't a reliable measure of the problem. A 5-year pump-out regime would yield a 1,300 pound nitrogen reduction per year. Need to define the problem more precisely. What about the cost and effectiveness of enforcement? The average cost of the pump-out is \$218 (\$44 per year). Section 1222.17(a).iv. requires licensed septic tank cleaners to report all pump-outs in a manner acceptable to the Loudoun County Health Department. These individuals currently provide the information via an online database. County staff would divide the County into five sectors and mail a notification to one sector per year such that all sectors are notified at the end of five years to manage the workload.

### **Issue #21 – WQIA requirement for smaller structures in seaward 50-feet**

Affirmed as major issue, but also dependent on Issues #5 and #33. New Option 3 – remove WQIA requirement and use performance standards. (Noted that performance standards are contained within the WQIA). Shouldn't require this analysis to approve encroachments into the buffer. This would be a de facto exemption.

### **Issue #22 – Buffer Area vs. RPA**

Does buffer = RPA?

Lots of support for Option 1 – clarify that only the RPA Buffer can be impacted with approval of the waiver; wetland impacts require approval of an RPA Exception.

### **Issue #23 – Elimination of WQIA requirement for “Administrative Waivers for Loss of a Buildable Area (Section 1222.19)”**

Affirmed as major issue.

### **Issue #24 – Administrative Waiver of Performance Criteria**

*Broad support for Option 2. This issue is resolved.*

### **Issue #25 – County Funding to protect streams in Ag Areas**

What is the fiscal impact? (not significant in relation to entire County budget).  
No provision for maintenance or replacement of fencing. Wait for BOS committee action.  
BOS may want to know what stakeholders think.  
What's the impact of regulatory implementation? (Participation in ag cost-share program is currently voluntary).  
Representatives were leaning toward Option 2.

Issue #26 – Appeals of Administrative Decisions

This is a secondary or dependent issue. Some support for Option 1 and also for Option 2.  
Why do we have a Review Board? Why not just an administrative process? (the Board reviews RPA encroachments processed as RPA Exceptions and appeals to administrative approvals).

**Issue #27 – Buffer Encroachments in Route 28 Tax District**

Affirmed as a major issue. Grandfathering, vesting concerns.

Issue #28 – Agreements in Lieu of Plan for Grading Permits

Representatives agreed that this issue is contingent on Issue #1.

Issue #29 – E&S Exemption for Septic Tanks

*Option #2 was preferred. This issue is resolved.*

Issue #30 – RPA Delineation Application Separate from a Plan of Development

Representatives agreed that this issue is contingent on Issue #1.

Issue #31 – Depicting the RPA on Development Plans

Representatives agreed that this issue is not major and that language can be worked out through a focused discussion with County staff.

Issues #32 - 42

These issues were remaining when adjournment time came, so representatives agreed to take these up as a first order of business on November 30, and to move on to a closer examination of the major issues as soon as possible after reviewing these remaining issues.